

HOLLY SPRINGS GAZETTE.

"VERITAS NIHIL VERETUR, NISI ABSCONDI."

BY THOS. A. FALCONER.

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REPORT OF THE COMMITTEE ON STATE BONDS.

Mr. SPEAKER: The select committee to whom was referred, "so much of the Governor's Message, as relates to state credit, the outstanding bonds of the State, and the interest thereon," have had that portion of the message under their consideration, and have given it the reflection and examination the grave and imposing question it presents, demand. Your committee cannot but regret that questions so materially affecting the honor, character and dignity of the state, should at any time arise, but more especially that they should have arisen at a time of such unusual pecuniary depression as the present. They feel, however, that having arisen, they should not be avoided, but be met, examined and decided without flinching or hesitation.

The message refers to the consideration of the Legislature two classes of bonds for the payment of which the faith of the State is pledged. One, the bonds issued and sold to pay the subscription of the state for the stock in the Planters' bank in the state of Mississippi. The other bonds issued in payment of the State's stock in the Mississippi Union Bank.

Your committee think it important to a right presentation to the questions involved, to make a plain and distinct statement of the circumstances under which the bonds were issued; the manner in which they were negotiated, and the subsequent action of the banks and the Legislature in reference to their sale.

By the act of the Legislature creating the Planters' Bank of the state, and the various amendments to that act, the Governor was authorized to subscribe on behalf of the state for \$2,000,000 of the capital stock of the bank, and to execute the bonds of the state, payable to the bank for that amount bearing interest from the time of their negotiation at the rate of six per cent. per annum, for the payment of which the faith of the state was pledged. No other restriction in the sale of these bonds was imposed, but that it should be sold for gold or silver. The act authorized the appointment of commissioners, by the bank, to negotiate a sale of the bonds. The two millions of stock was subscribed, and bonds for that amount executed and delivered to the bank. These bonds were sold and paid into the bank. The terms upon which they were sold, do not appear from any proofs before your committee.

Your committee have no doubt but that they were sold in strict conformity with the provisions of the bank charter. The long silence of the state and of the state's directory upon this subject, and the known character and high standing of the commissioners entrusted by the bank to negotiate the sale of the bonds, leaves no doubt on the mind of your committee as to the validity of the sale. The facts that the state of Mississippi continued after the sale to appoint her proper portion of the directory of the Planters' bank, and that from year to year the Legislature acted upon and recognized the interest of the state in the Planters' bank to the amount of the two millions of stock subscribed, amount to proof conclusive in the opinion of your committee, that the commissioners in the sale of the state bonds issued on account of the Planters' bank con-

the people of the state, when state and individual credit was highest, to enable the state herself to participate in an enterprise deemed profitable and advantageous. For these bonds the money was actually received, to the amount and of the kind required by the act of the Legislature authorizing their issuance and sale.

The prosperity that existed at the time of the issuance of the bonds of the state to the Planters' Bank continued until 1837. In the spring of 1837, the suspension of specie payments by the banks throughout the United States, took place. A dark and heavy cloud hung upon the monetary affairs of the whole country, affecting peculiarly the credit and circulation of the state of Mississippi. In this exigency the Governor of the state convened the Legislature to take council of each other as to what should be done to avert the storm so fearfully threatening the prosperity of our state, and to devise the best means of furnishing to the people a sound circulating medium. This Legislature after mature consideration determined upon the creation of a bank, predicated upon the landed interest of the country; and to enable the citizens subscribing for the stock, to obtain the means of putting the bank in operation, agreed to issue the bonds of the state for fifteen millions five hundred thousand dollars and loan them to the bank. Acting upon this determination, the Legislature passed the act chartering the "Mississippi Union Bank." The fifth and sixth sections of the act are in these words:

"5. Be it further enacted, That in order to facilitate the said Union Bank, for the said loan of fifteen million five hundred thousand dollars, the faith of this state is hereby pledged, both for the security of the capital and interest, and that seven thousand five hundred bonds of two thousand dollars each, to wit: eighteen hundred and seventy-five, payable in twelve years; eighteen hundred and seventy-five in fifteen years; eighteen hundred and seventy-five in eighteen years, and eighteen hundred and seventy-five in twenty years, and bearing interest at the rate of five per cent. per annum, shall be signed by the governor of the state to the order of the Mississippi Union Bank, countersigned by the state treasurer, and under the seal of the state; said bonds to be in the following words, viz:

"Know all men by these presents, that the state of Mississippi acknowledges to be indebted to the Mississippi Union Bank, in the sum of two thousand dollars, which sum

the said State of Mississippi promises to pay, in current money of the United States, to the order of the President, directors and company, in the year _____ with the interest at the rate of five per cent. per annum, payable half yearly at the place named in the endorsement hereto, viz: _____

On the _____ of every year until the payment of the said principal sum: in testimony whereof, the Governor of the State of Mississippi has signed, and the Treasurer of the State has countersigned, these presents, and caused the seal of the State to be affixed thereto, at Jackson, this _____ year of our Lord _____

Governor.
Treasurer.
SEC 6. Be it further enacted, That the said bonds may, be transferable by the endorsement of the President and of the Cashier of said bank, to the order of any person whomsoever, or to the bearer; and the said endorsement shall fix the place the said principal and interest shall be paid; and all expense incurred thereon shall be defrayed from the funds of the bank."

To make valid the pledge of the State's faith contained in the fifth section of the charter, a provision in the 47th section of the charter, was inserted in these words:

SEC. 47. Be it further enacted, That the fifth section of this act, whereby the faith of this State is pledged for the payment and redemption of the loan contemplated by this act, be referred to the next Legislature of this State, in pursuance of the ninth section of the seventh article of the constitution; and that this act be published under the direction of the governor, in at least three newspapers in this State, for three months previous to the next regular election; and that this act, together with the yeas and nays thereon, be entered on the journals of the senate and house of representatives."

The act chartering the Mississippi Union Bank containing the above provisions having passed, was approved by the governor so far as the action of that Legislature could be recognized. Pursuant to the provisions of the 7th section of the act, and the requirement of the ninth section of the 7th article of the constitution of the State, the act was published, and submitted to the succeeding Legislature which assembled in January 1838.

At that session of the Legislature the act was repassed according to the constitutional requisitions, and on the 5th of February, 1837, received the signature and approval of the governor. Thus it is seen that two Legislatures of the State representing the views and wishes of the people, authorized the issuance of the bonds and pledge of the State's faith for their redemption, under all the observance and sanctions imposed by the constitution. The Legislature which assembled in 1835, and repassed the act, was "fresh from the people" themselves and was elected after the people had full time to canvass and decide upon the propriety of the issuance of the bonds, and the pledge of the State's faith for their redemption. This sanction of the Legislature of 1838, to the act passed in 1837, is the deliberate expression of the public will, which is too late now to gainsay or question.

At the session of the Legislature in 1838, an act supplementary to the act chartering the Mississippi Union Bank was passed, and received the approval of the Governor on the 15th day of February, 1838. In the first section of the supplemental act, a provision authorizing the governor to subscribe for stock on behalf of the State in the Mississippi Union Bank, will be found in these words:

SEC. 1. Be it enacted by the Legislature of the State of Mississippi, That as soon as the books of subscription for the stock of the Mississippi Union Bank are opened, the governor of the State is hereby authorized and required to subscribe for fifty thousand shares of the stock of the original capital of the said bank; the same to be paid for out of the proceeds of the state bonds, to be executed to the said bank as already provided for in the said charter; and that the dividends and profits which may accrue and be declared by the bank on the said stock subscribed for in behalf of the State, shall be held by the said bank subject to the control of the State Legislature for the purpose of internal improvement, and the promotion of education."

Pursuant to this section the governor of the State did subscribe for the number of shares of stock specified in it. The supplemental act conferred on the managers of the bank the power of appointing commissioners to sell the bonds, and in the same section defined in a provision the terms upon which they should be sold.

This section is in these words:

SEC 9. Be it further enacted, That the president and directors of the Mississippi Union Bank, or the managers thereof, shall have ample power to appoint three commissioners to sell the state bonds, provided for in the fifth section of the act incorporating the Mississippi Union bank, in any market within the United States, or in any foreign market, under such rules and regulations as may be adopted by said president and directors or managers, not inconsistent with the provisions of the charter of said bank: provided, said bonds shall not be sold under their par value, and that said commissioners shall not accept of any commission or agency from any other banking or rail road company whatsoever, for the disposal of any bonds for the raising of money, or act as agents for the procuring of loans upon the pledge of real estate, for the benefit of any other corporation."

The 17th section of the supplemental act changing the appointing power of the Governor contained in the 14th section of the charter is in these words:

SEC. 17. Be it further enacted, That so much of the 14th section of the charter of the Mississippi Union bank as provides for the appointment of a provisional directory, be and the same is hereby repealed, and the ten managers elected by the second section of the charter, shall compose the first or provisional directory, who shall be required to perform all the duties of the said provisional directory in the original charter, and that the choice of a president for said bank, shall be confined to their own body, and that the president and directory so appointed shall remain in office until they are superseded by the election of successors by the stockholders, and the Legislature, as provided for in the charter."

After the passage of this supplemental act the Legislature, by joint ballot, elected ten citizens of the state of Mississippi, as managers of the bank just created.

The managers of the bank selected from their own body a president and entered upon the duties required of them by the charter. The requisite amount of stock having been subscribed, a demand was made upon the governor of the state for the state's bonds for five millions of dollars, which were prepared, signed and delivered to the managers. Commissioners were then appointed to negotiate the bonds. This duty the commissioners performed. The sale was made on the 18th of August, 1838, to Mr. Nicholas Biddle of Philadelphia. He was to pay one million on the first of November, 1838, one million on the first of January, 1839, one million on the 1st of March, 1839, one million on the 1st of May, 1839, in the city of New Orleans, and one million in gold and silver or their equivalent, in the city of Natchez, on the 1st of July, 1839. The bonds were put at interest from the date of the sale. No interest was stipulated for on the instalments of purchase money.

Your committee refer the House for greater certainty, as to the terms of the sale, to the documents marked A B C D and E which are attached hereto as a part of this report.

At the session of the Legislature of 1839, a joint committee composed of members of the Senate and House of Representatives, was appointed to examine and report upon the affairs of the Mississippi Union Bank, in whose report occurs this language,

"The examination was commenced with a journal, containing all the proceedings, deliberations, and ordinances of the board of managers, from the first meeting of the board on the 22d Feb'y 1838, up to the time of the commencement of the investigation. And your committee cannot refrain from applauding the zeal and spirit of candor that animated the board in the difficult and tedious task of organizing the institution, and which manifested itself in all of their subsequent and multifarious duties, and feel a pride in being able to testify, that the board of managers have shown, in every attitude in which they were placed, a painful anxiety to pursue the charter of the bank to the letter, and perform their duties with the most scrupulous fidelity."

"After the Governor of the State had made the subscription required of him by the supplement to the charter of the five millions of the capital allotted to the State, and executed in pursuance thereof, the State bonds in favor of the banks, the Bond Managers took immediate steps to have the bonds bro't into market, and, to that end, proceeded to the appointment of three gentlemen, of known ability, as commissioners, to dispose of them in any foreign or home market. The gentlemen selected for this responsible and high trust were Messrs. James C. Wilkins, William M. Pinckard and Edward C. Williamson. These gentlemen, duly authorized to make a negotiation of the bonds, for that purpose, left the State early in July last. But little hopes were entertained at the time, of their being successful in their mission; for it will be remembered, at that time the whole circulating medium of the United States was greatly deranged—confidence in the financial abilities of the country prostrate—and no disposition whatever manifested upon the part of the capitalists to make such heavy investments in State Stocks. Even the securities of those States known as unembarrassed, and whose character for credit and punctuality were well established for years, had sought in vain for the disposal of their securities. Contrary, however, to the expectation of the stock market, a negotiation of five millions of the bonds was effected by the commissioners highly advantageous to the state and to the bank, and in accordance with the injunctions of the charter, requiring them to be sold at par value. A sale reflecting the highest credit upon the commissioners themselves, and bringing timely aid to an embarrassed community."

"The disposal of the five millions of the bonds thus effected will elevate our State credit abroad, and introduce favorably our State securities in a market where they have been heretofore, but to a limited extent known, and pave the way, most auspiciously, to future sales of the remaining ten millions."

"It will be perceived that the purchaser of the first series of the bonds, was Nicholas Biddle, Esq. of Philadelphia, and the payments on the same are in instalments of one million each, on the 1st days of November, 1838; and of January, March, May and July, 1839. The four first instalments at the city of New Orleans, and the last at the city of Natchez, in gold, silver or their equivalents. The trade of our State generally ruling in favor of New Orleans where the four first instalments are made payable, and being large balances against our State in that city, the bank by receiving a moderate premium on the checks drawn against these instalments have enabled our citizens, at a low rate of exchange, to liquidate a great portion of their foreign debt, and at the same time has realized herself a profit on the transaction, greater than the difference of interest on the bonds (paid by the bank) while the instalments without the interest are maturing; the result following, that the proceeds of the sale of the State bonds, in reality, amounts to more than their par value. Already two of their instalments have been promptly met by the purchaser of the bonds, and the bank has been permitted to draw largely on the March instalment, with a like profit on the exchange drawn against it. In the face of these results, a doubt cannot be entertained but that the sale of the bonds has been made in strict conformity with the letter of instructions from the board of managers to the commissioners, and in accordance with the injunctions of the bank charter."

This report was received by the Senate and House of Representatives, concurred in, and ordered to be printed.

At the time this report was made, on by two of the instalments of the purchase money of the bonds had been paid; the three remaining instalments had not matured. Since that time every instalment has been promptly paid as it matured. At the session of the Legislature of 1839, there was not the slightest manifestation or disapprobation on the part of the representatives of the people, to the terms of the sale, nor was there any indication of a wish to rescind the contract, because of illegality in the negotiation of the bonds. In 1840 the Legislature again assembled and gave no evidence of a dissent to the sale. From the session of 1835 up to the present session, the Legislature have had full cognizance of the whole dealing upon the negotiation of the bonds, without evincing the least disposition to avoid the State's responsibility upon the sale.

The joint committee in making their report in 1839, state that the advantages derived by the bank by being able to draw

for exchange upon the instalments at their points of payment, had more than realized the amount of interest agreed to be allowed to the purchasers of the bonds.

It is now proposed that the State of Mississippi, through her Legislature shall repudiate the sales of the bonds, sold on account of the Mississippi Union and Planters' Banks, withdraw the faith of the State pledged for the redemption of the bonds, and refuse their payment.

Upon what principle either in law or morals, this proposition so flagrantly outraging the faith of contracts is based, your committee are at a loss to determine.

No one pretends that the full value of the bonds sold on account of the Planters' Bank, was not received. No one pretends that there was any irregularity in the sale, nor does any person question the perfect legality of the pledge of the State's faith for their redemption.

The only answer that your committee think it possible any citizen, having a due regard to the honor and character of the State of Mississippi could expect, or desire should be given to the holders of the bonds sold on account of the Planters' Bank, is, "the State owes the debt and she ought to pay it. To that she has pledged her faith, and that faith shall be preserved inviolate."

The evidence furnished to the joint committee at the session of 1839, by the managers of the Mississippi Union Bank, shews that the sale of the bonds on account of that bank was made on time and that the payments were to be in instalments of one million of dollars each—that the commissioners allowed interest at five per centum from the day of sale.

This interest would have amounted to about \$135,416 63, upon the amount of the instalments to the times of their maturity. The evidence furnished shews, that by drawing for exchange on the instalments at the respective times of their maturity and at their places of payment, the bank has realized a profit of more than \$135,416 63. This being so, the sale was evidently at par. The purchaser says, "I will pay to you, at my own risk, at New Orleans and other points, \$5,000,000 which by drawing on you, you can make pay to you, at the times and places of payment, \$5,135,416 63 and more, if you will sell to me the bonds of the State of Mississippi for \$5,000,000, running at interest that will yield to me at the same period of time, \$5,135,416 63."—Your Committee cannot perceive in what the State of Mississippi has been damaged by the negotiation. The bonds were issued and negotiated to pay \$5,000,000 of stock subscribed on the part of the State in the Mississippi Union Bank. This by the sale as made, they did. Being so issued, they belonged to the bank, to be used as par to the State and the bank. The State has five millions of stock in the bank paid for, with her bonds outstanding for that amount bearing an interest at five per centum.

The bank has received \$5,000,000, besides \$135,416 63 of profits, by drawing for exchange on the points at which the purchase money was made payable. The bank was required to obtain par for the bonds at the place of sale. They were sold in Philadelphia. Instead of taking the \$5,000,000 in Philadelphia, she stipulated for the payments at New Orleans and other places. If the bank had undertaken to bring the \$5,000,000 from Philadelphia to Jackson, in Mississippi? it would have cost as much in the risk, costs of insurance, and transportation, as the interest agreed to be allowed. The five per cent. interest reserved on the bonds, did not cover more than the exchange between the place of contract and that of payment. Suppose the bank had received the \$5,000,000 in cash, on the day of sale, then interest would have most certainly run upon the bonds. To have availed herself of the \$5,000,000, it must either have been brought to Mississippi, or drawn upon at Philadelphia. If brought to Mississippi, the costs of insurance and transportation would have been equal to the interest. If drawn upon at Philadelphia, it would only have brought what the charter required—par. This they brought under the contract made by the commissioners.

But suppose the commissioners did not obtain par for the bonds. In other words, suppose the payments at New Orleans had not made up the interest agreed to be allowed on the bonds in the way of exchange drawn on them, the transaction would then stand thus: Mississippi Bonds sold on the 18th August, 1838. \$5,000,000 00

Interest on \$1,000,000 at five per cent to 1st November, 1838,	\$10,416 66
Interest on \$1,000,000 at five per cent. to 1st January, 1839,	\$18,749 99
Interest on \$1,000,000 at five per cent. to 1st March, 1839,	27,083 33
Interest on \$1,000,000, at five per cent., to 1st May, 1839,	35,415 66
Interest on \$1,000,000, at five per cent., to 1st July, 1839,	43,749 99
	\$135,416 63
Amount due on contract of sale, Which is to be credited by the amount of money received, as follows:	\$135,416 63
On 1st Nov. 1838,	\$1,000,000
" " Jan. 1839,	1,000,000
" " Mar. "	1,000,000
" " May, "	1,000,000
" " July, "	1,000,000
	5,000,000 00

Balance due for interest, on first July, 1839, \$135,416 63

This sum of \$135,416 63, if taken from the \$5,000,000, would leave \$4,864,583 37, in money actually received by the Mississippi Union Bank from the purchaser of the bonds, which was used by the bank in an adventure in which the State was a partner, to the amount of \$5,000,000. This sum of \$135,516 63 of interest, has been more than realized by